



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Ella DeRand

12 IBIA 238 (05/16/1984)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF ELLA DERAND

IBIA 84-12

Decided May 16, 1984

Appeal from an order denying rehearing issued by Administrative Law Judge Daniel S. Boos in IP-BI-413B-82, IP-BI-649B-83.

Affirmed.

1. Indian Probate: Wills: Testamentary Capacity: Generally

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

2. Indian Probate: Wills: Testamentary Capacity: Generally

An allegation that an Indian decedent took medication for a mental condition is insufficient to support a finding of lack of testamentary capacity.

3. Indian Probate: Wills: Witnesses, Attesting

There is no requirement that the witness of an Indian will must be a longstanding friend or intimate acquaintance of the decedent.

APPEARANCES: Ruby Archdale, pro se, for appellants; Robert Martin, appellee, pro se.  
Counsel to the Board: Kathryn A. Lynn.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On January 13, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Ruby Archdale for herself and Delores Snow, Charlene Leo, and Thomas Durand (appellants). Appellants sought review of an October 27, 1983, order denying petition for rehearing entered in the estate of Ella Derand (decedent) by Administrative Law Judge Daniel S. Boos. <sup>1/</sup> The order denied rehearing of an August 17, 1983, order approving decedent's will and ordering distribution of her Indian trust property to her nephew, Robert Martin (appellee). For the reasons discussed below, the Board affirms these orders.

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<sup>1/</sup> The notice of appeal was timely filed with Judge Boos on Dec. 27, 1983.

### Background

Decedent, Fort Peck Allottee No. 2688, was born on June 30, 1919, and died on February 26, 1982. A hearing to probate decedent's Indian trust property was held on August 25, 1982. At that hearing, evidence was introduced showing that decedent's heirs were her half-brother and three half-sisters, appellants here. There was no evidence that decedent had executed a will.

After the hearing, but before a decision had been issued, appellee, who had not received notice of the hearing, produced a document purporting to be decedent's will. A second hearing concerning the validity of this will was held on May 16, 1983. Judge Boos approved the will on August 17, 1983.

By letters dated September 15 and 22, 1983, appellant Ruby Archdale, for herself and her brother and sisters, petitioned for rehearing on the grounds that decedent allegedly had mental problems, the will was not presented at the first hearing, and the will was not prepared on a Bureau of Indian Affairs (BIA) form. On October 14, 1983, appellants Delores Snow and Darlene Leo petitioned for rehearing and alleged that decedent had been influenced in the execution of the will by her mother, one of the witnesses to the will.

Judge Boos denied both petitions in an order dated October 27, 1983. The order states that the existence of the will, which was in the possession of an individual who did not receive notice of the hearing, was not known until after the first hearing; a will need not be executed on BIA forms so long as it conforms to the legal requirements imposed on Indian wills; and there was no evidence that undue influence had been exerted on decedent in the execution of her will.

Appellants appealed this decision to the Board in a notice of appeal received by Judge Boos on December 27, 1983. Statements of the positions of both parties have been filed in the appeal.

### Discussion and Conclusion

[1] On appeal appellants contend first that the will is invalid because decedent lacked testamentary capacity in that she had been a patient at the Warm Springs Mental Hospital and was taking medication for a mental condition. The burden of proving lack of testamentary capacity in Indian probate proceedings is on those contesting the will. Estate of Samuel Tsoodle, 11 IBIA 163 (1983); Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1 (1980).

[2] Appellants allege generally that decedent had mental problems; however, they make no attempt to show that these problems, if they existed at the time of the execution of this will, affected decedent's competency. The mere possibility that an individual's capacity may be diminished to some unspecified extent, either by a mental condition or by the taking of medication for such a condition, is insufficient to support a finding that she lacked the requisite testamentary capacity. See, e.g., Tsoodle, supra.

[3] Appellants next contend that the second witness to the will did not know the decedent well. There is no requirement that the witness of an

Indian will must be a longstanding and/or intimate acquaintance of the decedent. A will witness often meets a decedent for the first time when being asked to witness a will. See, e.g., Estate of Aaron (Allen) Ramsey, 11 IBIA 16 (1982). The surviving witness to decedent's will testified that the will was properly executed and that decedent appeared to have testamentary capacity. Nothing more is required.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision to approve decedent's will is affirmed. 2/

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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//original signed  
Jerry Muskrat  
Administrative Judge

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//original signed  
Anne Poindexter Lewis  
Administrative Judge

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2/ The Board does not address appellant's allegations concerning the rearing of appellee. Such considerations are irrelevant to the validity of decedent's will.